Denver Law Review

Volume 69
Issue 3 *Symposium - Children's Law*

Article 13

January 1992

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Hugh S. Glickstein

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HONORABLE HUGH S. GLICKSTEIN*

In *Jackson v. State*,[1] I made the following suggestion:

> I suggest that we are a society pervaded with not just the visible dysfunctional family, but also invisible non-harmonious families which do not produce the tragedy of suicide, but do produce tragedies of emotionally unhealthy children who pass along their toxic shame to their own children.

One psychologist has recently observed that our challenge is to change a society of human doers to human beings. We start with ourselves. Accordingly, to the bumper sticker question "Have *you* hugged your child today?" we now answer "Yes, my inner child." We judges, I suggest, could set an example by learning to understand ourselves. Arthur Schopenhauer put such individual challenge best "All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident."[2]

My personal core belief was expressed in *Costa v. Costa*:[3]

> It would be society's greatest reward—tangibly and otherwise—were the future adult inhabitants of this state able to look back to the 1980's and reflect how their predecessors finally came to recognize the priority to be given the well-being of children. Such future citizens would undoubtedly be the beneficiaries from (1) our present awareness that children are our most precious gift and entitled to enjoy the happiness which those adults responsible for them can provide; and that they are our only priceless commodity—the key to the well-being of society; and (2) our recognition that without prioritizing the physical, emotional and educational needs of children, all the efforts to eliminate crime, poverty and ignorance are only kneejerk, bandaid solutions which cure none of society's basic

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* Chief Judge Hugh S. Glickstein of the Fourth District Court of Appeal was elected by his colleagues as Chief Judge in April, 1991. He was the first chairman of The Florida Bar Legal Needs of Children Committee and the first chairman of the ABA Family Law Section Task Force for Children. This article originally appeared in FLA. B.J., Feb. 1992, at 67.

1. 553 So. 2d 719 (Fla. Dist. Ct. App. 1989).

2. *Id.* at 727 (emphasis in original). When this opinion was written, I pointed out that a book by Dr. Scott Peck had been on *The New York Times'* paperback best seller list for over 300 weeks and suggested that it "will continue to be read because of our growing appreciation of the indispensable need to understand ourselves." It has remained on that list two years later and, I hope, will continue to appear there each week as a sign of our perceived need to understand and feel better about ourselves. *See* SCOTT PECK, THE ROAD LESS TRAVELED: A NEW PSYCHOLOGY OF LOVE, TRADITIONAL VALUES, AND SPRITUAL GROWTH (1985).

3. 429 So. 2d 1249 (Fla. Dist. Ct. App. 1983).

ills.[4]

The foregoing still rings true nine years after becoming the initial statement of purpose for The Florida Bar's Special Committee for the Needs of Children, an interdisciplinary committee.

Our involvement in the best interests of the child requires, in my view, unlocking a series of doors, the first of which is getting in touch with our own feelings as adults to validate our inner child's feelings from birth, respect our inner child's uniqueness and allow our inner child's self-esteem to grow and flower.[5]

Opening the next door means that we need to understand that our parenting has multi-generational effects—both positive and negative. Since hearing Reverend Glen Rediehs speak on parenting in 1984, I have often said that in child advocacy, parenting is the dog and everything else is the tail. This translates into educating our young people about parenting skills and alerting our new mothers and fathers about realistic expectations of their children's behavior to prevent and diffuse possible child abuse.[6] It means educating the community to understand that an infant without bonding can wind up a psychopathic killer;[7] that a small child without nurturing will be a dysfunctional adult;[8] and that by the time a child is as young as three, he or she becomes "shame based" because of dysfunctional parents.[9]

In his most recent best seller, John Bradshaw says this:

> PARENTING—THE HARDEST JOB OF ALL
>
> Being a good parent is a tough job. I believe it is *the hardest job any of us will ever do.* To be a good parent, you must be mentally healthy. You need to be getting your own needs met through your own resources, and you need a spouse or significant other to support you in the process. Above all, *you must have healed your own wounded inner child.* If your inner child is still wounded, you will parent your child with this frightened, wounded, and selfish inner child. You will either do a lot of what your parents did to you or you will do just the opposite. Either way, you will be trying to be the perfect parent your wounded inner child dreamed of. However, being just the opposite is equally damaging to your children. Someone once said, "One hundred and eighty degrees from sick is still sick."[10]

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4. *Id.* at 1252.

5. *See* SUSAN FORMAN, TOXIC PARENTS (1989).

6. Having heard Reverend Rediehs discuss the parenting programs he had instituted at Valencia Community College, I called the President of Broward County Community College and the Chairman of its Board of Trustees and asked them to join me for breakfast. When we finished our breakfast, the two of them had conceived a Parenting Resource Center for their college.

7. *See* KEN MAGID & CAROLE A. MCKELVEY, HIGH RISK: CHILDREN WITHOUT A CONSCIENCE (1987).

8. *See* E. KENT HAYES, WHY GOOD PARENTS HAVE BAD KIDS (1989).

9. *See* JOHN BRADSHAW, BRADSHAW ON: THE FAMILY (1988). Bradshaw says: "[g]uilt says I have *made* a mistake; shame says I *am* a mistake." *Id.* at 2 (emphasis in original).

10. JOHN BRADSHAW, HOMECOMING: RECLAIMING AND CHAMPIONING YOUR INNER CHILD 87 (1990) (emphasis in original).

Florida statutes establish, as the public policy of that state, that shared parental responsibility shall be ordered unless it would be detrimental to the child.[11] Professor Hyde suggests shared parenting is a message to the child that says your mother and father love you very much and are both going to care for you.[12] If the child is to understand it whenever possible and if the parents are to give the message to the child whenever possible, then lawyers and judges should view themselves as Western Union—making sure the message is delivered and understood. The Florida statutes provide the blanks that must be filled with solid, accurate information so that the trial court's decision upon the best interests of the child rests on a sure, factual footing. This brings the dissolution contest quickly to an end with an enlightened plan for the child's future.[13]

Shared parental responsibility was a visionary act by the Florida legislature. Trial judges and lawyers, however, must still deal with emotionally dysfunctional parents who blame each other instead of learning to understand themselves through available therapy. What went awry was the legislature's fiddling with the Uniform Dissolution of Marriage criteria, leaving out one critical criterion and chopping up another.

I never focused on the omission until the Florida Supreme Court's recent decision in *Schutz v. Schutz*,[14] involving a mother's ongoing post-dissolution invalidation of the father in the children's eyes and ears. Neither the trial court nor the supreme court had the benefit of the omitted criterion protecting the children: "The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent."[15] All that either court had was the Florida criteria for establishing the best interests of the child based on which parent was more likely to allow contact with the nonresident parent.[16] Obviously, this section is simply is not enough.

In my concurring opinion in *Frisard v. Frisard*,[17] I compared the Florida and Michigan versions of the act.[18] The opinion shows that Michigan requires inquiry as to: "the capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or

11. FLA. STAT. ch. 61.13(2)(b)2 (1991).

12. Laurance M. Hyde. Jr., *Child Custody in Divorce*, JUVENILE AND FAMILY COURT JOURNAL, Spring, 1984, at 1, 22.

13. FLA. STAT. ch. 61.13(3)(a)-(j) (1991).

14. 581 So. 2d 1290 (Fla. 1991).

15. MICH. COMP. LAWS § 722.23 (3)(j) (1991).

16. FLA. STAT. ch. 61.13(3)(a) (1991). "The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent."

17. 453 So. 2d 1150 (Fla. Dist. Ct. App. 1984) (Glickstein, J., concurring).

18. *Id.* at 1153 (quoting Doris J. Freed & Henry H. Foster, *Family Law in the Fifty States: An Overview*, 17 FAM. L.Q. 365, 415 (1984)). FLA. STAT. ch. 61.13(3)(a)-(j) (1991). MICH. COMP. LAWS § 722.23 (3)(j) (1991). Michigan's statute reads a little differently in that it refers to the court's finding the child to be of sufficient "age." Florida's statute does not mention age. It speaks to the child's intelligence, understanding and experience, which we should not forget.

creed, if any."[19] The Florida legislature chose only to require inquiry as to "the love, affection and other emotional ties existing between the parents and the child."[20]

The existing language in Florida's version is a "take 'em as you find 'em" approach, while the Michigan version opens the door to changing dysfunction to function before writing off the family's existence as a family. I heard one out-of-state family lawyer describe his specialty as a "funeral director." Families in crisis need therapy, not funerals. Without studying the legislative history, I do not know why the legislature chose to omit one critical criterion and shorten up another. Otto Von Bismarck observed: to retain respect for sausages and laws, one must not watch them in the making.[21]

The third door we face is the Child's Bill of Rights. The Report of the Florida Study Commission on Child Welfare,[22] in March, 1991, said that:

> Florida must formulate a policy for children and their families around these basic concepts:
>
> a. Every child must be:
> 1) protected from harm;
> 2) provided with basic food, clothes, and shelter;
> 3) provided with necessary medical services and a basic education; and
> 4) provided with the opportunity for cognitive, aesthetic and emotional development.
>
> b. When help is needed, the first obligation is to assist the child in his or her family. If, despite such assistance, the family cannot meet the basic needs of its children, government must assure that their needs are met, regardless of economic status.
>
> c. Local communities are best suited to identify needs, provide accountability, and support a child's sense of identity. Local communities should be given more control in selecting, purchasing, and delivering services to children and families in compliance with statewide standards.[23]

This door requires a number of keys to open, the first of which is *risk taking*. Emerson wisely observed that every revolution begins with a single thought in an individual's mind.[24] I believe that, in child advocacy, individual heroes and heroines conceive programmatic responses, then have the courage to take the risks necessary for success. As has been said, one cannot have lemonade without lemons; and one cannot meaningfully address the best interests of the child without leaders—

19. *Id.* at 1152.
20. FLA. STAT. ch. 61.13(3)(b) (1991).
21. *Quoted in, in re* Graham, 104 So. 2d 16, 18 (Fla. 1958).
22. STUDY COMMISSION ON CHILD WELFARE, REPORT OF FINDINGS AND RECOMMENDATIONS (Fla. 1991) [hereinafter STUDY].
23. *Id.* at 1.
24. Ralph Waldo Emerson, *History*, *in* EMERSON'S ESSAYS 1, 2-3 (Harper & Row, 1951).

individuals with vision, faith, courage, energy, creativity and commitment. Such individuals understand that their involvement is neither a marathon nor a sprint, but is more like a mile run—requiring pacing and grit but having a destination in mind and in sight. They act out Reinhold Niebuhr's Serenity Prayer: God, give us grace to accept with serenity the things that cannot be changed, *courage to change the things which should be changed,* and the wisdom to distinguish the one from the other.[25]

The next key to this door is *interdisciplinary networking.* The success of this mission lies in its multi-discipline composition—legislators, Governor and cabinet officers, doctors, lawyers, teachers, judges, social workers and others in common focus. Networking must be horizontal and vertical. Associations and institutions must join hands; counties must exchange ideas and programs; every area of government—judicial, legislative and executive—must play an equal role. Similarly, within each state, the individual communities are best able to focus on prevention and early intervention to thwart a child's misdirection, with the resources of the state opened to rehabilitation and long-term treatment.

The final key to this door is *political will.* If a state or community has it, results will be achieved. Two examples of political will in Florida were The Florida Bar's Children's Committee in 1984 which undertook to establish guardians ad litem in Florida for children caught up in dissolution proceedings, and a consortium of groups bringing the Family Court to Florida, as authorized by the supreme court's opinion in *In re Report of the Commission on Family Courts,*[26] which held:

> We approve the recommendations of the Commission on Family Courts, and we accept the Commission's recommendation concerning the jurisdiction of a family division. We emphasize our support for the recommendation that there be a means to assign all family court matters that affect one family, including dissolution of marriage, custody, juvenile dependency and delinquency proceedings, to one judge. In approving these recommendations, we note the need for each circuit to design a family division to best serve its particular area. Geography, population, and available facilities are all factors that must be considered in tailoring a family division to the needs of a particular circuit.
>
> We agree that the assignment of a judge to family law cases is one of the most difficult and stressful of all the responsibilities of a circuit judge. Consequently, we acknowledge that there is a need for rotation among judges assigned to the family division. For such a division to work, judges must be committed to carrying out this judicial responsibility and willing to participate in education and training programs in this area of the law. Family law is a developing and expanding area of court jurisdiction. As noted in the Commission's report, approximately fifty

25. REINHOLD NIEBUHR, THE SERENITY PRAYER (emphasis added) (JOHN BARTLETT, FAMILIAR QUOTATIONS, 823 (15th ed. 1980)) (1943)).

26. 588 So. 2d 586 (Fla. 1991).

> percent of the civil court jurisdiction in our circuit courts, without the inclusion of juvenile delinquency and dependency cases, is comprised of family law matters. New techniques are regularly being implemented to try to make this jurisdiction of our courts work more effectively. Further, we recognize that delays in family law matters aggravate the parties' problems. Clearly, an early resolution is best for all concerned.[27]

It took until 1990[28] to get legislation to authorize appointments of guardians ad litem.[29] Without the statute, many trial judges were not making the appointments due to an absence of authority. Children need the protection of a guardian ad litem in many dissolution cases because one or both of the parents is likely to be emotionally dysfunctional. Lawyers, judges and parties need to understand that; and if Schopenhauer is right, someday we shall understand it.[30] What the legislature did not do, however, was to provide any funding for guardians ad litem. The irony is that the lawyers representing the adults in the marriage may receive a statutory fee and costs but the guardians of the unprotected children have no fiscal support in individual cases. This has to be corrected.

Another problem in the area of guardians ad litem came to light with the 1991 National Study of Guardian ad Litem Representation.[31] The Child Abuse Prevention and Treatment Act in 1974 required states to appoint a guardian ad litem for maltreated children as one condition of receiving federal grant funds authorized by the act.[32] The repassage of the act in 1988 required the Administration for Children, Youth and Families to conduct a study to determine how each state was providing guardian ad litem representation.[33] The national study's conclusions

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27. *Id.* at 591.

28. In 1983, The Florida Bar sponsored the first interdisciplinary state bar-sponsored children's committee, upon which other states such as Virginia, Delaware, Massachusetts, Missouri and Utah have patterned similar efforts. The Florida committee discovered immediately that other states were providing guardians ad litem for children caught up in dissolution cases while Florida's children had to fend for themselves. Audrey Schiebler, vice-chairwoman of the committee, dogged the legislature for four sessions until it funded pilot programs in several judicial circuits. In 1988, committee members joined with the state guardian ad litem program in training volunteers.

29. FLA. STAT. ch. 61.401-404 (1991).

> In an action for dissolution of marriage, modification, parental responsibility, custody, or visitation, if the court finds it is in the best interest of the child, the court *may* appoint a guardian ad litem to represent the child. In such actions which involve an allegation of child abuse or neglect as defined in ch. 415.503(3), which allegation is verified and determined by the court to be well-founded, the court *shall* appoint a guardian ad litem for the child.

Id. at ch. 61.401 (emphasis added).

30. *See supra* text at page 1.

31. ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, OFFICE OF HUMAN DEVELOPMENT SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL STUDY OF GUARDIAN AD LITEM REPRESENTATION (1990).

32. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247. 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101-07) (1974).

33. Child Abuse Prevention and Treatment Act, sec. 104, Pub. L. No. 100-294, 102 Stat. 102 (1988).

and nine recommendations should awaken our consciousness. In Florida, the study found:

> Florida has a statewide volunteer GAL [guardian ad litem] program. In 1979, the Florida Office of the State Courts Administrator studied the use of lay volunteers, Public Defenders, and private attorneys in abuse and neglect proceedings and concluded that lay volunteers are effective advocates for children. In 1982, Florida Supreme Court Rule 8.300 approved the use of lay volunteers as GALs. Florida Statute § 415.508 mandates the appointment of GALs in all civil and criminal abuse and neglect proceedings. Despite this requirement, only 3 of the 11 counties sampled provide representation for 100 percent of all abused and neglected children. Eight counties do not appoint GALs in 20 to 100 percent of their cases. While Glades, Hendry, and St. Johns Counties provide representation in 100 percent of their cases, Clay, Dade, DeSoto, Duval, Lake, and Polk Counties provide representation only in 50 percent, 50 percent, 75 percent, 35 percent, 8 percent, and 40 percent of their cases, respectively. In Sumter County, the local court does not appoint GALs, so no cases are represented. Statewide an estimated 49 percent of the cases are represented. This figure agrees with an estimate given by the State-level respondent. Respondents in all of the counties reporting a lack of representation said that there were not enough GALs for all cases.[34]

Other states should follow Florida's example and seize the opportunity to open all of these doors for children, and to set an example for those states that are reluctant. After all, to influence others, example is not the main thing—it is the only thing. How well will we involve ourselves in the best interests of the child? Gabriela Mistral cautioned us:

> WE ARE GUILTY
> OF MANY ERRORS AND
> MANY FAULTS
> BUT OUR WORST CRIME
> IS ABANDONING THE CHILDREN,

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34. STUDY *supra* note 22 at 84. In August, 1991, I successfully tendered to the Executive Council of the ABA Family Law Section a resolution, which was revised and adopted, subject to approval by the ABA House of Delegates in February, 1992. It now reads:

RESOLUTION

RESOLVED, that the American Bar Association urges:

(1) Every state and territory to meet the full intent of the Federal Child Abuse Prevention and Treatment Act, whereby every child in the United States who is the subject of a civil child protection related judicial proceeding will be represented at all stages of these proceedings by a fully-trained, monitored, and evaluated guardian ad litem in addition to appointed legal counsel.

(2) That state, territory and local bar associations and law schools become involved in setting standards of practice for such guardians ad litem, clarify the ethical responsibilities of these individuals and establish minimum ethical performance requirements for their work, and provide comprehensive multidisciplinary training for all who serve as such guardians ad litem.

(3) That every state and territory, where judges are given discretion to appoint a guardian as litem, in private child custody and visitation related proceedings, the bench and bar jointly develop guidelines to aid judges in determining when such an appointment is necessary to protect the best interests of the child.

NEGLECTING THE
FOUNTAIN OF LIFE.

MANY OF THE THINGS WE NEED
CAN WAIT. THE CHILD CANNOT.
RIGHT NOW IS THE TIME
HIS BONES ARE BEING
FORMED, HIS
BLOOD IS BEING MADE, AND
HIS SENSES ARE BEING
DEVELOPED.
TO HIM WE CANNOT ANSWER
"TOMORROW."
HIS NAME IS "TODAY."[35]

35. Gabriela Mistral, Nobel Laureate of Chile, *cited in* 397 N.W.2d 81, 88 (S.D. 1986).